

OGC Has Reviewed

OGC 77-4867

29 July 1977

MEMORANDUM FOR: Acting Deputy to the DCI for the Intelligence
Community
Deputy Director for Administration
Deputy Director for Operations
Deputy Director for Science & Technology
Deputy to the DCI for National Intelligence Officers
Legislative Counsel
Inspector General
Comptroller
Director, Equal Employment Opportunity

STATINTL FROM

: [REDACTED]
Assistant General Counsel

SUBJECT : Draft Executive Order on "Logging of Outside Contacts"

REFERENCE : OGC 77-4760, 26 July 1977, same subject

1. Attached is a copy of the comments which the General Counsel has sent OMB concerning the proposed Executive Order on "Logging of Outside Contacts."

2. Therein, he has indicated we will not necessarily transmit any further comments, if we find that the comments received from Agency components do not differ materially from what is set out there.

3. If the comments in the attached memorandum adequately reflect your position, please have your office notify me of that fact; there is no need in that event to forward additional comments. If you do have additional comments, please forward them per the schedule in the referent memorandum. My extension is [REDACTED]

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Attachment

[REDACTED]

Washington, D. C. 20505

29 July 1977

William M. Nichols, Esq.
General Counsel
Office of Management and Budget
Washington, D. C. 20503

Attention: Mr. Ronald A. Kienlen

Dear Mr. Nichols:

Pursuant to your request of 22 July, herewith are comments reflecting this Agency's position concerning the proposed Executive order entitled "Logging of Outside Contacts." Given the short time period available, these comments reflect primarily my own views and should be considered preliminary. A full response incorporating the views of all appropriate elements of the Agency, assuming those views differ from the ones expressed below, will be forwarded as soon as possible.

In general, it is my opinion that the order would produce large administrative burdens on the one hand and few public benefits on the other. The extent of the burden would of course vary from agency to agency and would depend on the number of officials required to comply, the number of contacts required to be logged, and the amount of time, undoubtedly considerable, required to be spent in interpreting the order, preparing implementing guidelines, monitoring compliance, responding to requests for public disclosures, defending exemption claims in correspondence and possibly in the courts, etc.

As I understand it, leaving aside for the moment the Section 5 exceptions and the special provision relating to the Executive Office of the President the order would apply as a minimum to all Presidential appointees subject to Senate confirmation and all other executive officials deemed by these appointees "to have substantial influence in the making of agency decisions." To this multitude, under Section 2(c), others could be added at the discretion of heads of agencies. Those to whom the order applied would be obligated to log each oral communication, presumably including both telephone calls and meetings, with all outside parties, meaning all persons other than federal employees in the executive branch or military personnel, concerning official business, which because it is defined without limitation probably must be read as covering all matters in which members of the affected class involve themselves other than matters of a purely personal nature. Apparently all contacts with Senators, Congressmen, and members of

their personal staffs or congressional committee staffs, all of whom evidently qualify as outside parties, would come within the sweep of the order. Further, where an oral communication took the form of a meeting, or perhaps even a hearing or briefing in the case of the Congress, the required log apparently would have to identify each outside party who participated and note each item discussed, so that an entry for a single meeting or hearing might well consist of dozens of names and notations. To make matters worse, where two or more members of the affected class of officials were present, and of course at meetings or hearings many such officials might be present, each apparently would be required to maintain a separate log of the same events.

Speaking just for my own office, which is staffed by lawyers, all of whom could fairly be said to have a substantial influence in the making of agency decisions and all of whom are routinely engaged in contacts with outside parties in regard to official business, as these terms are defined in the order, I look upon the need to adhere to the order with some dismay. That is true notwithstanding the fact that many of our outside contacts have to do with matters that are classified for reasons of national security and therefore would be exempt from the logging and public disclosures requirements. In this connection I should point out that, as the order is presently written, all communications with judges, at least in public proceedings, would appear to meet the definition of reportable outside contacts.

The stated objectives of the order are to "discourage acceptance to use improper influence and strengthen public confidence in the integrity of Executive decisionmaking." However, while the logging requirements go far enough to create a very significant burden, I do not believe they go far enough to create a useful or effective safeguard against undue outside influence or official misconduct. The information required to be logged would be limited to the date of contact, the name and status of the outside party, and a brief notation as to the matters discussed. It may be that some improper contacts might be avoided altogether or brought to light by a requirement to record this fragmentary information, but I frankly doubt the deterrent effect would be very great. Indeed, the logging requirement might deter more legitimate contacts than questionable ones. Among other things, enforcement of the order being as spotty and difficult as it would surely be and the system being essentially one of self-regulation, an official who would be open to illicit outside pressures would probably also be willing to skirt the logging requirement by failing to record any questionable contact and, if called to account, contending that he thought the contact was exempt.

There may be Privacy Act questions that deserve further study if they have not already been resolved. The central question is whether the recordkeeping and public disclosure requirements of the order are compatible with the restrictions set forth in 5 U.S.C. §552a(b), relating to the disclosure of information that is retrievable by name.

Specifically with reference to CIA, I believe there are problems that warrant special mention. As you know, many if not most activities conducted by the senior officials of this Agency are not available for public dissemination and would fall within one or more of the exceptions set out in the order. However, there remain many Agency activities that do and will continue to involve outside contacts that would be reportable under the order. Inasmuch as the usual practice for each official is to keep a single log reflecting all routine activities, including those whose subject matter may not be disclosed, this order would probably require that each official keep several separate logs running, or more likely, that the reportable data be extracted from the single log each day and assembled separately for the public record.

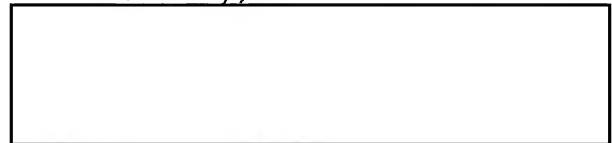
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As indicated above, we will forward a further set of comments should the coordinated Agency position differ materially from the personal views I have expressed in this letter.

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Sincerely,



Anthony A. Lapham
General Counsel



GENERAL COUNSEL

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OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

July 22, 1977

OGC 77-4706
7-22-77

DD/A Registry

77-4239
77-4239

77-3002

Executive Registry

77-8452

Admiral Stansfield Turner
Director
Central Intelligence
Agency
Washington, D. C. 20505

Dear Admiral Turner:

Herewith, in accordance with the provisions of Executive Order No. 11030, as amended, is a proposed Executive Order entitled "Logging of Outside Contacts."

This proposed order was informally submitted by a member of the White House staff.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving your comments concerning this proposed Executive order. Comments or inquiries may be submitted by telephone to Mr. Ronald A. Kienlen of this office (395-5600; IDS 103-5600). I will assume that you have no objection to the issuance of this proposed order if your comments have not been received by Monday, August 1, 1977.

Sincerely,

William M. Nichols
William M. Nichols
General Counsel

Enclosure

EXECUTIVE ORDER

LOGGING OF OUTSIDE CONTACTS

The American people have a legitimate interest in having available a public record of contacts between officials of the Executive Branch and citizens seeking to influence Federal action and policy. A system of recording the contacts of such outside parties with Executive Branch officials will discourage attempts to use improper influence and strengthen public confidence in the integrity of Executive decision-making.

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 301 of title 3 and section 17301 of title 5 of the United States Code and as President of the United States, it is hereby ordered as follows:

Section 1. Definitions. As used in this order:

(a) "agency" means an executive agency (other than the General Accounting Office) as defined in section 105 of title 5 of the United States Code, and includes all independent regulatory bodies and all offices within the Executive Office of the President and the U.S. Postal Service and the Postal Rate Commission;

(b) "executive official" means

(1) any individual appointed by the President by and with the advice and consent of the Senate to a position in any agency and any officer, paid at the rate of 0-7 or higher in the uniformed services, or

(2) any individual appointed by the President to a position in the Executive Office of the President and paid an annual salary equivalent to, or greater than, GS-15;

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(c) "head of agency" means, in case of an agency headed by more than one person, the chair or comparable member of such agency;

(d) "outside party" means any individual not employed by or on behalf of any agency or military department;

(e) "official business" includes, but is not limited to, any case or matter under investigation by an agency; any suggested investigation; any agency rule-making, adjudicatory or licensing procedure; any agency personnel matter; any matter involving the expenditure of Federal funds; any matter involving proposed agency regulations or policies.

Section 2. Logging of Communications with Outside Parties.

(a) Except as provided in section 5, all executive officials shall record the data required in section 3 relating to each oral communication with an outside party concerning official business.

(b) Heads of agencies shall extend the coverage of this order to all officials in their agencies, in addition to executive officials, whom they determine to have substantial influence in the making of agency decisions.

(c) Heads of agencies are also authorized to determine whether the needs of their agencies and the public interest require more extensive regulation of officials' communications with outside parties and, if so, to promulgate such regulations.

Section 3. Nature of Log. The data to be recorded with respect to communications subject to section 2 are:

- (1) date of communication;
- (2) name and official status of the outside party; and
- (3) brief notation as to the subject matter of the communication.

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Section 4. Disclosure. Heads of agencies shall establish and maintain within their agencies effective programs for the prompt and convenient disclosure to the public of the records maintained pursuant to this order.

Section 5. Exceptions. The logging and disclosure provisions of this order do not apply to communications

(a) with members of the news media acting in their capacity as such;

(b) the disclosure of which pursuant to this order is subject to statutory prohibition or is protected by privilege; or

(c) the disclosure of which pursuant to this order would

(i) jeopardize information specifically required by Executive Order to be kept secret in the interest of national defense or foreign policy;

(ii) constitute a clearly unwarranted invasion of personal privacy;

(iii) impair an ongoing investigation or prosecution or disclose investigative techniques or procedures; or

(iv) endanger informants, confidential sources, or law enforcement personnel.

Section 6. Communications from Executive Office of the President Concerning Investigations. In addition to recording the data required by this order concerning oral communications with outside parties, all officials covered by this order shall maintain a record of oral communications originating from the Executive Office of the President concerning agency investigations, matters or cases involving particular individuals or groups, or suggesting the initiation of such investigations, matters or cases. The data required to be recorded shall be subject to the provisions of sections 3-5.

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Section 7. Supervision. (a) The Attorney General, or such other official as may be designated by the President, shall:

(i) render to the heads of agencies such advice as may be needed to enable them to implement and maintain the requirements of this order;

(ii) issue such guidelines as may be necessary to carry out the purposes of this order;

(iii) review implementation and maintenance of the requirements of this order to insure adherence to its provisions; and

(iv) recommend to the President from time to time such revisions in this order as may appear necessary to insure that the process of administrative decision-making is fair and effective.

(b) Heads of agencies shall cooperate to the fullest extent practicable with the Attorney General to facilitate the performance of his responsibilities under subsection (a) of this section.

Section 8. Effective Date. This order shall be effective as of _____.

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